

**These charges are only allegations which
may be contested by the licensee in an
Administrative hearing.**

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

EMMANUELLA CHERISME-THEOPHILE, M.D.

STATEMENT
OF
CHARGES

EMMANUELLA CHERISME-THEOPHILE, M.D., the Respondent, was authorized to practice medicine in New York State on or about June 17, 2002, by the issuance of license number 225117 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. At or about 9:00pm on September 20, 2010, Respondent's obstetrical patient, Patient A, arrived at Long Island College Hospital (LICH) via ambulance, in early labor and experiencing an acute psychotic episode. The patient was placed on continuous fetal monitoring and was psychiatrically stabilized with medications. Thereafter, on September 21, 2010, poorly reactive fetal tracings with some variable decelerations were noted. Respondent called for an emergent C-section to be performed by her and ordered nursing to take the patient to the OR, at which time, the anesthesiologist placed a spinal anesthetic. The Respondent was not present and, when paged to the OR, did not respond, causing another physician to step in to perform the procedure. Respondent arrived after the incision for the C-section was made. Respondent, after ordering the emergent section, and without notice to any other healthcare staff, began an elective procedure on Patient B. Respondent's care and treatment deviated from accepted medical standards, in that Respondent:

1. Inappropriately and/or with disregard for the welfare of the patient, failed to be present and ready to perform the ordered C-section in a timely manner;
2. Inappropriately failed to delay the elective procedure on Patient B, so as to timely begin the ordered emergent C-Section on Patient A and/or failed to arrange for another physician to perform the C-Section;
3. Inappropriately and/or with disregard for the welfare of the patient, failed to advise any hospital staff, physician or nurses, of her whereabouts after ordering the emergent C-Section;
4. Failed to maintain a record which accurately reflects the care and treatment of the patient.

B. On or about September 21, 2010, Patient B, was admitted to LICH ambulatory surgery center for an elective diagnostic hysteroscopy and D&C to be performed by Respondent for the management of post-menopausal bleeding. A handwritten post-operative note, dated September 21, 2010, states that the hysteroscopy was abandoned due to "white mode" difficulty. However, the dictated operative report, prepared on September 26, 2010, describes findings at hysteroscopy. Respondent:

1. Willingly, and with intent to deceive, created a false operative report;
2. Knowingly and willfully created a hospital medical record for Patient B which did not accurately reflect the care and treatment rendered to the patient;

C. On or about July 28, 2009, Patient C, a woman with a past medical history of 3 prior intra-abdominal surgeries: a right ovarian cystectomy, a myomectomy, an appendectomy and a cone biopsy of the cervix, was admitted to LICH ambulatory surgery center for a diagnostic hysteroscopy and laparoscopy. During the course of the July 28, 2009 procedure, Respondent lacerated the small bowel. Patient C's medical record contains two different dictated operative reports. Respondent's care and treatment deviated from accepted medical standards, in that Respondent:

1. Failed to perform the appropriate surgical technique for placement of the umbilical trocar;
2. Failed to maintain a record that accurately reflected the care and treatment of the patient.
3. Knowingly and willfully created a hospital medical record for Patient C which did not accurately reflect the care and treatment rendered to the patient;

D. On July 1, 1999, Respondent began residency training at Geisinger Medical Center (GMC), Danville, Pennsylvania. Respondent was suspended on December 31, 2001 and dismissed on January 15, 2002. Respondent then began a residency program at SUNY Health Sciences Center at Brooklyn, Kings County Hospital Center (SUNY-HSCB, at KINGS) NY on March 4, 2002. In December, 2003, Respondent began a period of "Independent Evaluation" at SUNY Downstate. On July 7, 2004, Respondent was notified that SUNY Downstate program's decision to suspend and not graduate Respondent was sustained. Respondent entered resident program at Nassau University Medical Center (NUMC) from January 5, 2005 through June 30, 2006. On August 15, 2006, entered into an employment contract with Lourdes Medical Associates, (LMA) Hadden Heights, New Jersey, which included requirement that she meet the qualifications and duties for the practice of Obstetrics/Gynecology at Our Lady of Lourdes Medical Center. Respondent was terminated from her employment contract, on November 1, 2006. On March 2007, Respondent was employed by the Southern Jersey Family Medical Center, Inc. (SJFMC). Respondent was suspended on July 25, 2007 and, on July 27, 2007, submitted a letter of resignation, pre-dated to July 24, 2007. On March 9, 2009, Respondent was employed by Long Island College

Hospital (LICH) as an attending physician in the Department of Obstetrics and Gynecology. Respondent was terminated on November 10, 2010 and, thereafter, entered into a settlement agreement with LICH, effective December 31, 2010, whereby Respondent resigned her medical staff privileges. With regard to these positions, Respondent:

1. Knowingly and with the intent to deceive, falsely answered questions on her December, 2004 application for residency at NUMC, to wit:
 - a. In response to the question (application #12): "Were you ever dismissed from employment for reasons other than reduction in staff?" Respondent answered "Yes", and stated only, "I did not graduate." Respondent's only further explanation, (asked for in application #20) was "I did not receive a certificate. I have to make up time."
 - b. With regard to her prior Experience (application #18), Respondent listed SUNY – Kings County Hospital Center, and stated her Reason for Leaving as: "I did not graduate," when, in fact, she was terminated for cause and,
 - c. Respondent also listed "Geisinger Medical Center," and stated her Reason for Leaving as: "Better Opportunities," when, in fact, she was dismissed for cause.
2. Knowingly and with the intent to deceive, falsely answered questions on her September 7, 2006 applications to LMA, to wit:

- a. Regarding Training Information, Respondent stated her reason for not completing training at Geisinger was, "Family leave of absence," when, in fact, she was dismissed for cause, and,
- b. Respondent further stated her reason for not completing training at SUNY – Kings County Hospital Center was, "Contract dispute with new Chairman/Program Director," when, in fact, she was terminated for cause.
- c. In response to the question (# 3, under Disclosure Information):

Have your clinical privileges or medical staff membership at any hospital or healthcare institution, voluntarily or involuntarily, ever been denied, suspended, revoked, restricted, denied renewal or subject to probationary or to other disciplinary condition...or have proceedings toward any of those ends been instituted or recommended by any hospital or healthcare institution, medical staff or committee or governing board?

Respondent answered, "No," when, in fact she had been dismissed from Geisinger and terminated from SUNY – KCHC.

- 3. Knowingly and with the intent to deceive, falsely answered questions, and omitted answers, on her December 14, 2006 application for appointment to the medical staff at SJFMC, to wit:
 - a. In answer to the question: "Have your privileges at any hospital ever been suspended, diminished, revoked, or not renewed," Respondent answered "Yes," stating only, "I was not given certificate of completion at SUNY/Downstate," when, in fact, she was terminated for cause and,
 - b. Under Previous Employment History, Respondent listed LMA and for "reason for leaving," Respondent stated, "Temporary employment" when, in fact, Respondent's contract was terminated for cause, and,

- c. Respondent failed to include her employment history with Geisinger.
4. Knowingly and with the intent to deceive, falsely answered questions, and omitted information, on her February 20, 2009, application to LICH and on her accompanying Curriculum Vitae, to wit:
- a. In response to the following question:
- “Has your participation in any internship, residency, or other training Program ever been suspended, restricted or terminated prior to completion, or have you been denied certification of completion of training in any such program?” (Application #4)
- Respondent answered, “Yes,” stating, “No certificate of completion at SUNY/Downstate.” Respondent did not make any mention of Geisinger, and,
- b. In response to the following question:
- “Have your medical staff appointment/employment status or clinical privileges in any hospital or health care facility ever been denied, revoked, suspended, restricted, reduced, limited, placed on probation, not renewed voluntarily relinquished, discontinued or otherwise changed, including any leaves of absence?”
- Respondent did not state her terminations from LMA nor from SJFMC, both of which were for cause.
5. Knowingly and with the intent to deceive, falsely answered “No,” and omitted information, on her July 30, 2007, N.Y.S. medical license registration renewal, to the following question:
- “Since your last registration application, has any hospital or licensed facility restricted or terminated your professional training, employment or privileges, or have you voluntarily or involuntarily resigned or withdrawn from such association to avoid the imposition of such action due to professional misconduct, unprofessional conduct, incompetency or negligence?”

Respondent failed to disclose that her employment/privileges were terminated for cause from LMA on November 1, 2006; and suspended, for cause, pending investigation, SJFMC on July 25, 2007, and that Respondent resigned on July 27, 2007 to avoid the imposition of action due to professional misconduct, unprofessional conduct, incompetency and/or negligence.

6. Knowingly and with the intent to deceive, falsely answered "No" on her August 4, 2011, N.Y.S. medical license registration renewal, to the following question:

"Since your last registration application, has any hospital or licensed facility restricted or terminated your professional training, employment or privileges, or have you voluntarily or involuntarily resigned or withdrawn from such association to avoid the imposition of such action due to professional misconduct, unprofessional conduct, incompetency or negligence?"

Respondent failed to disclose that her employment/privileges were terminated for cause from, LCH on November 10, 2010.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(3) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of the following paragraphs:

1. A - C and their subparagraphs;

SECOND SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(5) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of the following paragraphs:

2. A - C and their subparagraphs;

THIRD SPECIFICATION

GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(4) by practicing the profession of medicine with gross negligence on a particular occasion as alleged in the facts of the following paragraphs:

3. A, and subparagraphs;

FOURTH THROUGH SIXTH SPECIFICATION

FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(32) by failing to maintain a record for each patient which accurately

reflects the evaluation and treatment of the patient, as alleged in the facts of the following paragraphs:

4. A, A.4;
5. B and subparagraphs;
6. C, C.2, C.3.

SEVENTH THROUGH FOURTEENTH SPECIFICATION

FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law § 6530(2) by practicing the profession of medicine fraudulently as alleged in the facts of the following paragraphs:

7. B.1, B.2
8. C.3
9. D, D.1 and subparagraphs;
10. D, D.2 and subparagraphs;
11. D, D.3 and subparagraphs;
12. D, D.4 and subparagraphs;
13. D, D.5 and subparagraphs;
14. D, D.6 and subparagraphs.

FIFTEENTH THROUGH NINETEENTH SPECIFICATION


VIOLATION OF § TWENTY-EIGHT HUNDRED FIVE-K

OF THE PUBLIC HEALTH LAW

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(14) by violating section twenty-eight hundred five-k of the Public Health Law, as alleged in the facts of the following paragraphs:

15. D, D.2 and subparagraphs;
16. D, D.3 and subparagraphs;
17. D, D.4 and subparagraphs;
18. D, D.5 and subparagraphs;
19. D, D.6 and subparagraphs.

DATE: February 19, 2016
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional Medical Conduct